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10/037,377	12/31/2001	Wayne Clement Sigl	29245-5/KC12,657.3	6501

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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 04/22/2004

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,377

Applicant(s)

SIGL, WAYNE CLEMENT

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,5,8-15,18,19 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) 4,12,18 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,8-11,13-15,19 and 22-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8-4-03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 4, 12, 18, and 26 are still withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5.

2. With regard to Applicant's remarks on pages 14-15, such remarks have been considered but the Examiner maintains the position that the claims are properly withdrawn at this time since the election of species is based on the Figures and as admitted by Applicant on, e.g., page 14, lines 17-18, the claims withdrawn are drawn to features not shown in the Figures of the elected species.

The requirement is still deemed proper and is therefore made FINAL.

Information Disclosure Statement

3. The information disclosure statement filed 11-24-03 has been placed in the application file, but the information referred to therein has not been considered. The Examiner notes that copies of references listed therein were not provided on the basis that they were submitted in parent applications. However such parent applications no longer have such copies therein. Due to the large number of references cited copies of such references are requested in order to consider the 11-24-03 IDS. Such IDS will be considered upon receipt of such references.

Specification

Description

4. The amendments to the abstract and claim 1 filed on 2-4-04 are not in compliance with 37 CFR 1.121 as revised 7-30-03. The abstract was not entered due to the number of changes made thereto. Claim 1 was changed in red ink by the Examiner to bring it into compliance as a courtesy to Applicant. Further responses, if any, should be compliant.

5. The abstract of the disclosure is objected to because the legal terminology, i.e. "comprise", should be avoided. Correction is required. See MPEP § 608.01(b). See previous paragraph with regard to the abstract filed 2-4-04.

6. The disclosure is objected to because of the following informalities: The amendment to page 21, line 3, lines 1-5 thereof are inconsistent with Figures 3-4 because the retainer flap in these Figures does not include sections 94A and 94B as now set forth. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. Claims 1, and 13-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, the range of percentages of the coverage of the surface opposed to the body faceable surface by the retainer flap is unclear, see lines 9-10 and then 17-18 of that claim, i.e. if the flap covers 100% of the surface as set forth on lines 9-10 than the flap covers

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more than just a portion of the baffle as set forth on lines 17-18. Note also claims 5 and 11 and also claim 8, last two lines, which set forth the range being less than 100%. This rejection also applies to similar language in claim 15. Note claims 19, 22, last two lines, and 25 with regard to claim 15.

Claim Language Interpretation

8. "Labial" or "interlabial" devices or pads are defined as set forth on page 2, lines 19-22 and page 9, lines 6-8. It is noted however that the claims claim an absorbent article, see page 9, line 4. "Vestibule" is defined as set forth on page 9, lines 9-12, 16-18 and 22-24. Direction terms are defined as set forth on page 9, line 33-page 10, line 13. "Resilient extensibility" is defined as set forth on page 19, lines 14-18. "Primarily" and "partially" have not been specifically described in the specification and therefore are given their common, i.e. dictionary definition, i.e. "primarily" is defined as "chiefly; principally", i.e. more than 50%, and "partially" is defined as "of, pertaining to, or affecting only part; not total", i.e. 0% to less than 100%. "Printed" also has not been specifically described and therefore will be given its common definition, i.e. "a mark or impression made in or on a surface by pressure". Due to the lack of clarity of the claims as set forth in paragraph 7 supra and to be consistent with the largest number of claims, the range of percentages of the coverage of the surface in claims 1 and 15 will be considered to be greater than about 40% to less than 100%.

Effective Filing Dates of Claims

9. The effective filing date of claims 1, 5, 8-11, 13-15, 19 and 22-25 is now the actual filing date of the instant application which is 12-31-01 because the parent application did not disclose the portion of the body faceable surface covered being 50% or greater and the claim language does not limit the percentage coverage to less than 50%.

Claim Rejections - 35 USC § 103

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 1, 5, 11, 13, 15, 19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molnlycke PCT '008 in view of Lassen et al '062.

Claims 1, 5, 11, 13: See Claim Language Interpretation section supra, abstract, page 2, lines 4-28, page 3, lines 1-30, page 4, lines 5-17, page 5, line 36-page 6, line 3, claims 1-2 and Figures of PCT '008, i.e. the cover is 2, the baffle is 3, the absorbent is 1, the retainer flap as set forth on lines 5-6 and 10 et seq is elastic sheet 4 (It is noted that "elastic" as defined by the American Heritage Dictionary is "returning or capable of returning to an initial form or state after deformation"). Therefore the '008 device includes all the claimed structure except for the absorbent article being configured for disposition primarily with a vestibule of a female wearer. However, in the portions cited above, '008 sets forth that the retainer flap 4 constitutes an addition to any conventional sanitary towel, i.e. napkin, and that such avoids the necessity of having a separate receptacle, i.e. package. Furthermore see Lassen et al. '062 at, e.g., Figures 1,

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2, 5-9 and 11 -16 as well as col. 1, lines 14-27 and 30-32, col. 5, lines 63-68, col. 6, line 17-22, col. 9, lines 20-63, col. 19, line 39-col. 20, line 6, i.e. conventional absorbent articles include sanitary napkins which are configured for partial, i.e. less than 100%(includes more than 50% and thus "primarily"), disposition with in the vestibule of a female wearer which are packaged in a separate receptacle. Therefore to employ a conventional sanitary napkin, such as that taught by Lassen et al., which is configured for disposition primarily within the vestibule of a female wearer and is packaged in a separate receptacle on the '008 device would be obvious to one of ordinary skill in the art in view of the recognition that such a configured sanitary napkin is conventional and such combination would obviate the need for a separate receptacle, i.e. cost and use efficient, and the desire of '008 to be combined with any conventional sanitary napkin and obviate the need for a separate package.

With regard to the range of percentages of coverage, see Claim Language Interpretation section supra and Figures 1-2, i.e. at least about 15% of the opposed surface is covered, and Figures 3-5, i.e. about 50% of the opposed surface is covered. Also see the Response to arguments section infra.

Claims 15, 19 and 25: see discussion of claims 1, 5, 11 and 13 supra.

12. Claims 8-10 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molnlycke '008 and Lassen et al '062 as applied to claims 1 and 15 above, and further in view of Lenaghan '326 and Srinivasan '567.

Claims 8, 10, 22 and 24: The PCT '008 reference teaches folding the flap first and then folding the napkin whereas the claims require that the flap be adapted to be folded over the opposing portions, i.e. the capability of folding the napkin first and then the flap which '008 does

not necessarily teach. However see Lenaghan, Figures, and Srinivasan at Figures 7-11. To fold the napkin first and then fold the pocket material as taught by Lenaghan and Srinivasan on the PCT '008 device would have been obvious to one of ordinary skill in the art in view of recognition that such would better prevent the contents and soiled surfaces from contacting the exterior, i.e. by folding first, the contents and surfaces would first be shielded prior to any other manipulation, and the desire of PCT '008 to so shield. It is noted that claims 8 and 22 do not require the article to be folded in half or that the first and second portions of the outer edge are coterminous and coextensive when folded.

Claims 9 and 23: see definitions of "elastic" and "resiliently extensible" supra and the portions of '008 cited supra, e.g. abstract, lines 7 and 11-15, i.e. the flap would necessarily and inevitably actively retract as claimed.

13. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Molnlycke '008 and Lassen et al '062 as applied to claim 1 above, and further in view of Houghton et al '950 and Richardson '466.

Applicants claim the surface which assists in defining and which is disposed within the first cavity includes printed text. In other words the surface of the article which is exposed when the device is folded and the retainer flap is flipped or folded over the ends or in its packaged state has text thereon, i.e. the exterior of the packaging of the absorbent article has printed text thereon. The '008 device does not include such text but does teach that the absorbent article is initially packaged, then unpackaged and used and then repackaged for disposal. Furthermore, see Houghton et al at col. 3, lines 49-61, col. 8, lines 19-27, Figures, col. 14, lines 56-59, col. 16, lines 1-19 (It is noted that "graphics" as defined by the dictionary means "Of or pertaining to

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written representation”, and “written” is defined as “Written form”, “Language symbols or characters written or imprinted on a surface, readable matter”, i.e. printed text). See also Richardson at col. 1, lines 43-46, i.e. instructions or text printed on the packaging which provides information regarding use. These patents teach it is known to use printed text on any portion or portions of the package/absorbent article combination, including the package exterior of such combination, to provide information regarding the combination. Therefore, to employ informational graphics, i.e. printed text, on a portion or portions of the package/article combination which will form the package exterior of such combination on the ‘008 device would be obvious to one of ordinary skill in the art in view of the recognition that it is known to use graphics to provide information about the package/article combination, e.g. instructions as to the intended manner of use, e.g., how to open, use, close, etc., in combination with the packaged absorbent article as taught by Houghton et al and Richardson and the desire for proper use of any absorbent article so as to, e.g. maximize performance, minimize injury, etc.. In so doing the text would be located on the surface which assists in defining and which is disposed within the first cavity when the absorbent article is in use and not in its packaged state. It is noted that this claim does not require text only within the first cavity, i.e. could be other places as well.

Response to Arguments

14. The statement of common ownership on page 15 has been noted but such statement does not overcome the double patenting rejection. The double patenting rejection has not been reraised because the application 09/975,108 has been abandoned. Applicants’ remarks with regard to the teachings of the prior art on pages 16-17 have been noted but are deemed not

persuasive in that they are narrower than the teachings of PCT '008 which does not explicitly limit coverage to any particular percentage of the surface, i.e. where does it say that the coverage has to be less than about 40% to enable tucking as argued? Furthermore, '008 explicitly teaches that the dimensions of the sheet 4 can be modified, see page 6, lines 5-8 thereof, and shows, e.g. Figures 4 and 5, a flap covering about 50% of the opposed surface and body-faceable surfaces respectively. Also '008 expresses a desire to shield as much of the inner surface as possible, see, e.g., page 2, lines 30-31.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Baum, Alvarado and Wanberg references also teach retainer flaps of various percentage coverage.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the limitations added to claims 1, 14 and 15.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
March 12, 2004